

**IOWA WORKFORCE DEVELOPMENT
UNEMPLOYMENT INSURANCE APPEALS**

68-0157 (9-06) - 3091078 - EI

JESUS SUAREZ

Claimant

APPEAL NO. 12A-UI-14038-NT

**ADMINISTRATIVE LAW JUDGE
DECISION**

ADVANCE SERVICES INC

Employer

OC: 02/26/12

Claimant: Appellant (1)

Section 96.5-1-j – Voluntary Leaving – Temporary Employment

STATEMENT OF THE CASE:

Claimant filed a timely appeal from a representative's decision dated November 14, 2012, reference 01, which denied unemployment insurance benefits finding the claimant voluntarily quit his employment with Advance Services, Inc. because he failed to notify the temporary employment firm within three working days of the completion of his last work assignment. The claimant had been told to do so in writing and it was the claimant's responsibility to notify the firm within three working days. After due notice was provided, a telephone hearing was held on February 7, 2013. Mr. Suarez participated. The employer participated by Mr. Micheal Payne, Loss Prevention Specialist. Employer's Exhibits One and Two were received into evidence.

ISSUE:

The issue in this matter is whether the claimant is considered to have voluntarily quit his employment with Advance Services because he failed to contact the temporary employment service within three working days after the completion of his last assignment as he had agreed to do at the time that he was hired.

FINDINGS OF FACT:

Having considered all of the evidence in the record, the administrative law judge finds: Jesus Suarez began his employment with Advance Services, Inc. on August 30, 2010. On August 1, 2012, Mr. Suarez signed an agreement with Advance Services that he would contact the temporary employment service within three working days after the completion of each temporary assignment to inform Advance Services that he was available for additional work assignments through the company. The agreement informed Mr. Suarez that if he failed to do so Advance Services would conclude that Mr. Suarez had quit his employment with the company and the claimant was also informed that failure to contact the temporary company within three working days would affect Mr. Suarez's unemployment insurance benefits.

Mr. Suarez began his most recent assignment with Advance Services on August 21, 2012. At that time he was assigned to work as a general laborer at the Sygenta company. Mr. Suarez

worked as a full-time worker on that assignment until October 2, 2012 when he was informed by the Sygenta company that his assignment had ended.

Although Mr. Suarez had signed an agreement with Advance Services that he would contact Advance Services within three working days after his last assignment had ended, Mr. Suarez did not do so. Company records reflect that the claimant did not contact Advance Services again to establish his availability or to request additional assignments from the temporary service. Because the claimant failed to contact the temporary employment service as agreed and as required by the provisions of the Employment Security Law, the claimant was considered to have voluntarily quit his employment with Advance Services.

REASONING AND CONCLUSIONS OF LAW:

For the reasons that follow, the administrative law judge concludes claimant voluntarily left employment without good cause that was attributable to the employer.

Iowa Code section 96.5-1-j provides:

An individual shall be disqualified for benefits:

1. Voluntary quitting. If the individual has left work voluntarily without good cause attributable to the individual's employer, if so found by the department, but the individual shall not be disqualified if the department finds that:

j. The individual is a temporary employee of a temporary employment firm who notifies the temporary employment firm of completion of an employment assignment and who seeks reassignment. Failure of the individual to notify the temporary employment firm of completion of an employment assignment within three working days of the completion of each employment assignment under a contract of hire shall be deemed a voluntary quit unless the individual was not advised in writing of the duty to notify the temporary employment firm upon completion of an employment assignment or the individual had good cause for not contacting the temporary employment firm within three working days and notified the firm at the first reasonable opportunity thereafter.

To show that the employee was advised in writing of the notification requirement of this paragraph, the temporary employment firm shall advise the temporary employee by requiring the temporary employee, at the time of employment with the temporary employment firm, to read and sign a document that provides a clear and concise explanation of the notification requirement and the consequences of a failure to notify. The document shall be separate from any contract of employment and a copy of the signed document shall be provided to the temporary employee.

For the purposes of this paragraph:

(1) "Temporary employee" means an individual who is employed by a temporary employment firm to provide services to clients to supplement their work force during absences, seasonal workloads, temporary skill or labor market shortages, and for special assignments and projects.

(2) "Temporary employment firm" means a person engaged in the business of employing temporary employees.

871 IAC 24.26(19) provides:

Voluntary quit with good cause attributable to the employer and separations not considered to be voluntary quits. The following are reasons for a claimant leaving employment with good cause attributable to the employer:

(19) The claimant was employed on a temporary basis for assignment to spot jobs or casual labor work and fulfilled the contract of hire when each of the jobs was completed. An election not to report for a new assignment to work shall not be construed as a voluntary leaving of employment. The issue of a refusal of an offer of suitable work shall be adjudicated when an offer of work is made by the former employer. The provisions of Iowa Code section 96.5(3) and rule 24.24(96) are controlling in the determination of suitability of work. However, this subrule shall not apply to substitute school employees who are subject to the provisions of Iowa Code section 96.4(5) which denies benefits that are based on service in an educational institution when the individual declines or refuses to accept a new contract or reasonable assurance of continued employment status. Under this circumstance, the substitute school employee shall be considered to have voluntarily quit employment.

The purpose of the statute and the agreement between the temporary employment service and the claimant is to provide notice to the temporary agency employer that the claimant is available for work at the conclusion of temporary assignments. Mr. Suarez signed the agreement to contact the temporary employment firm within three working days on August 1, 2012, but Mr. Suarez failed to contact his temporary employment employer after his most recent assignment at the Sygenta company had come to an end on October 2, 2012.

The contract that Mr. Suarez signed was in Spanish, on a separate piece of paper and clearly outlined the agreement between the parties and the responsibility of Mr. Suarez to contact Advance Services as he had agreed to do so and as required by the law.

Because the evidence in the record establishes that Mr. Suarez did not follow the terms of the agreement that he entered into, the claimant is considered to have voluntarily quit his employment with Advance Services for reasons that are not attributable to the temporary employer. Unemployment insurance benefits are withheld because of this reason.

DECISION:

The representative's decision dated November 14, 2012, reference 01, is affirmed. The claimant voluntarily quit employment when he failed to notify the temporary employment firm within three working days of the completion of his last work assignment as he had been told to do so in writing and had agreed to. Unemployment insurance benefits are withheld until the claimant has worked in and been paid wages for insured work equal to ten times his weekly benefit amount and the claimant is otherwise eligible.

Terence P. Nice
Administrative Law Judge

Decision Dated and Mailed

pjs/pjs